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THE MILEAGE BOOK LAWS. — Several states have recently enacted that all railroad companies within the state should sell one thousand mile tickets at a certain price. The constitutionality of a Michigan statute to this effect was lately before the Supreme Court of the United States. *Lake Shore, etc. R. R. Co.* v. *Smith*, 173 U. S. 684. It was admitted that the state had power to fix maximum rates, but the statute was held unconstitutional on the ground that this regulation was unreasonable, as discriminating in favor of a portion of the public, — namely, the class that could afford to buy such a ticket, — and therefore constituted a taking of property without due process of law. The chief justice and two associate justices dissented. A similar enactment has since been passed upon in two New York decisions. In the earlier case, as the railroad company apparently had received its charter after the act was passed it was held to have contracted, upon sufficient consideration, to surrender its right to refuse to issue such tickets. *Purdy* v. *Erie R. R. Co.*, New York Law Journal, March 9th, 1900. In the later case, as it was shown that the company's charter antedated the act, the court felt obliged to follow *Lake Shore, etc. R. R. Co.* v. *Smith*, *supra*, *Beardsley* v. *Erie R. R. Co.*, New York Law Journal, March 9th, 1900.

"Due process of law" is generally stated to be synonymous with "the law of the land," referred to in *Magna Charta*. The phrase is therefore to be interpreted broadly, as meaning the provisions of the constitution and the fundamental principles of justice as established for the last five or six hundred years. A law, therefore, to be unconstitutional under this clause, must be not merely oppressive, but purely arbitrary. No matter how unjust or inexpedient it may seem, if it can be regarded as a reasonable exercise of the legislative function it must be upheld. And since a corporation engaged in a public employment depends entirely on the permission of the state for its liberty to carry on such business, clearly the state — which granted its charter, and which can

revoke it — should also have full power to regulate the corporation in its occupation. As was well said in *Munn* v. *Illinois*, 94 U. S. 113, speaking of one who has entered on a public undertaking: "He may withdraw his grant (to the public) by discontinuing the use, but so long as he maintains the use he must submit to the control." Notwithstanding this undoubted police power of the state, it has been decided, and in spite of considerable adverse criticism, correctly, it would seem, that the legislation may not be such as to deprive one engaged in such public employment of the reasonable profits of his investment. *Smyth* v. *Ames*, 169 U. S. 467; 12 HARVARD LAW REVIEW, 50. But even under this liberal view, which certainly reaches the verge of the law, it is difficult to support the mileage book case. It was not contended by the railroad that the rate fixed by the legislature was so unreasonably low as to prevent its operating at a profit, which it would seem could be the only possible ground for the decision. In fact, it appears that similar tickets were actually sold by other roads at as low a rate. The decision was squarely placed by the court on the ground that it made an "exception in favor of a particular class," — those who can afford to buy tickets by wholesale. But how can it be favoritism when the statute expressly enacts that the ticket shall be sold to all? Would the court be prepared to hold that an act fixing a ferry fare at two cents was unconstitutional because it discriminated against that portion of the community which did not happen to have two cents? Yet that would seem a legitimate deduction from the actual decision. It is perhaps unfortunate that the New York court was not able to distinguish the second as well as the first case from the Supreme Court decision, for were the matter again brought before the latter court it is possibly not too much to hope that it might find the circumstances sufficiently changed to warrant a decision in favor of the constitutionality of the law.

TRIAL BY EIGHT JURORS. — The Supreme Court of the United States has recently decided that a provision in the constitution of Utah to the effect that in criminal trials, other than capital, a jury shall consist of eight jurors, is not in violation of any of the provisions of the Federal Constitution. *Maxwell* v. *Dow*, 20 Sup. Ct. Rep. 448. In view of the admission that the question involves the right of a state to do away entirely with trial by jury in state courts, and since this is the first decision on this particular point by the Supreme Court, the case is obviously of great importance.

The opinion involved the consideration of two distinct contentions made by the plaintiff in error. It was argued, first, that a trial by a jury of twelve in a criminal prosecution is a privilege or immunity of a citizen of the United States which, by section 1 of the Fourteenth Amendment, a state is forbidden to abridge. But the court held that the right to a trial by jury in a state court for a state offence had never been a privilege or immunity of a citizen of the United States, because the Sixth Amendment, which provided for trial by jury in criminal prosecutions, had been adopted to protect the people only against encroachments by the federal government, and did not apply to trials under control of the individual states. It was further contended that imprisonment after a trial before a statutory jury of eight was a deprivation of liberty without due process of law, and therefore again in violation of the Fourteenth Amendment. But the court expressed their opinion that trial by jury had never been affirmed